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January 21, 2009

VIA HAND DELIVERY

The Honorable Howard E. Manning, Jr.
Wake County Superior Court
Wake County Courthouse
316 Fayetteville Street
Raleigh, NC 27602-0351

Re: *Hope-a Women's Cancer Center v. State of North Carolina, et al.*
File No. 08 CVS 007955
Wake County Superior Court

Dear Judge Manning:

Enclosed please find the following in connection with the above-referenced matter: (1) a Reply Brief in Support of Defendants' Amended Motion to Disqualify; and (2) a notebook containing the core pleadings in this case (as you requested).

Thank you for your consideration of these materials. Best regards.

Sincerely,

A handwritten signature in cursive script that reads "Mark A. Davis".

Mark A. Davis
Special Deputy Attorney General

Enclosure
MAD/gm

cc: Counsel of Record (via electronic transmission)

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
08 CVS 007955

HOPE-A WOMEN'S CANCER CENTER, P.A.,)
et al.)

Plaintiffs)

v.)

STATE OF NORTH CAROLINA, et al.)

Defendants,)

and)

ASHEVILLE RADIOLOGY ASSOCIATES, P.A,)
et al.)

Defendant-Intervenors.)

**REPLY BRIEF IN SUPPORT OF
AMENDED MOTION TO
DISQUALIFY**

ARGUMENT

I. THE INSTITUTE AND ITS IN-HOUSE ATTORNEYS ARE BARRED BY N.C. GEN. STAT. § 84-5 FROM REPRESENTING PLAINTIFFS IN THIS ACTION.

The most noteworthy aspect of the Institute's response brief is its strenuous efforts to keep this Court from considering the actual language used by the Legislature in N.C. GEN. STAT. § 84-5. Perhaps this should not be a surprise - given that the text of the statute could not be clearer in its rejection of the Institute's proffered interpretation.

A. A Corporation's Use of Licensed In-house Attorneys is Not Enough to Avoid the Scope of N.C. GEN. STAT. § 84-5.

While its brief is not entirely clear, it appears that the Institute's primary argument is that a corporation can get around the statutory prohibition on corporations practicing law simply by utilizing in-house attorneys who have been licensed by the State Bar. The Institute bases this

argument on the premise that licensed attorneys can - as a general proposition - freely represent litigants throughout North Carolina. The fatal defect in this argument, however, is that an exception to this general rule exists where - as here - the attorney is seeking to provide such representation of a third-party litigant within the course and scope of his employment *by a corporation*. This exception has been expressly recognized by the North Carolina Supreme Court on at least two separate occasions. *See Gardner v. North Carolina State Bar*, 316 N.C. 285, 341 S.E.2d 517 (1986) (attached hereto as Ex. A); *State ex rel. Seawell v. Carolina Motor Club, Inc.*, 209 N.C. 624, 184 S.E. 540 (1936) (attached hereto as Ex. B).

While the Institute is left with trying to point out *factual* differences between *Gardner* and the present case, its efforts are for naught because the *legal* principle articulated in *Gardner* (and in *Seawell*) applies with equal force here: “*The fact, much urged by petitioners . . . that the employees Nationwide proposes to use for this purpose are all licensed attorneys[] does not change the situation. ‘Since a corporation cannot practice law directly, it cannot do so indirectly by employing lawyers to practice for it.’*” *Gardner*, 316 N.C. at 291, 341 S.E.2d at 521 (emphasis added) (citing *Seawell*). This language leaves the Institute no “wobble room.” The Institute is, therefore, trying to argue a proposition that has been directly rejected by the Supreme Court.

The Institute’s argument is also inconsistent with the actual text of N.C. GEN. STAT. § 84-5. Subpart (b) of the statute provides that a corporation’s in-house attorneys are permitted to represent the corporation itself (and any affiliated entities) if said attorneys are properly licensed. *See* N.C. GEN. STAT. § 84-5(b) (2008). If the Institute’s argument was correct, this subpart would be redundant since - under the Institute’s theory - such in-house attorneys would already be permitted to represent virtually *any* litigant (regardless of that litigant’s connection with the corporation).

B. N.C. GEN. STAT. § 84-5.1 Constitutes an Exclusive Exception to the Rule That Corporations Cannot Practice Law.

While the Institute's brief is not a model of clarity, its next argument appears to be that N.C. GEN. STAT. § 84-5.1 is not really an exception to N.C. GEN. STAT. § 84-5 and that § 84-5 does not even apply to nonprofit corporations. These arguments are meritless. Because these two statutes appear consecutively in Chapter 84 and relate to a common subject (the ability of corporations to practice law), they are related statutes and must be read *in pari materia*. See *Holly Ridge Assocs., LLC v. North Carolina Dep't of Env't & Natural Res.*, 361 N.C. 531, 536, 648 S.E.2d 830, 834 (2007) (courts should construe statutes *in pari materia* together and attempt to harmonize them when possible).

The plain meaning of these two statutes - when read together - is clear. North Carolina General Statute § 84-5 states the general rule that corporations cannot practice law while N.C. GEN. STAT. § 84-5.1 provides one exclusive exception to this rule. The enactment of N.C. GEN. STAT. § 84-5.1 was both logical and necessary. But for its existence, nonprofit corporations seeking solely to provide indigent legal services would be subject to the blanket prohibition of N.C. GEN. STAT. § 84-5 and, as such, unable to lawfully do so. Thus, N.C. GEN. STAT. § 84-5.1 must logically be viewed as a statutory exception to N.C. GEN. STAT. § 84-5.

The Institute seems to then make a half-hearted attempt to suggest that it fits within the exception set out in N.C. GEN. STAT. § 84-5.1. However, such a claim is not tenable because the Institute cannot satisfy *either* of the two required elements under N.C. GEN. STAT. § 84-5.1 as (1)

it is not an entity established for the exclusive purpose of providing indigent legal services; and (2) the named Plaintiffs are not indigent.¹

In apparent recognition of the fact that it simply does not qualify under N.C. GEN. STAT. § 84-5.1, the Institute then tries to deny the obvious relationship between the two statutes and makes a somewhat convoluted argument that N.C. GEN. STAT. § 84-5.1 should be viewed as a “shield” rather than a “sword.” The Institute further claims that the legislative history of N.C. GEN. STAT. § 84-5.1 controls its meaning.

As this Court is well aware, however, such an approach is fundamentally erroneous where - as here - the plain words of the statute are unambiguous. As our Supreme Court has stated:

Where the statutory language is clear, there is no need to refer to legislative history. The plain words and meaning of a statute cannot be overcome by a legislative history which, through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction.

Rickenbaker v. Rickenbaker, 290 N.C. 373, 382, 226 N.C. 347, 352 (1976). *See also Piedmont Canteen Serv., Inc. v. Johnson*, 256 N.C. 155, 161, 123 S.E.2d 582, 586 (1962) (“[W]here the language of a statute expresses the legislative intent in clear and unambiguous terms, the words employed must be taken as the final expression of the meaning intended unaffected by its legislative history.”).

¹ The Institute claims that the State has failed to prove that the named Plaintiffs are not indigent. However, there is absolutely nothing in the record to suggest that (1) Plaintiffs are not for-profit entities; (2) they fit within *any* definition of the term “indigent”; or (3) that Nelson Mullins is representing them *pro bono*. Moreover, to the contrary, Plaintiffs’ own websites and filings with the North Carolina Secretary of State reject any notion that they are anything other than purely for-profit medical providers. (*See Exs. C- F*)

Moreover, if the Institute's argument were given effect, the enactment of N.C. GEN. STAT. § 84-5.1 would have been superfluous; a statutory exception for the provision of indigent legal services by a nonprofit corporation would not have been necessary. *See State v. Coffey*, 336 N.C. 412, 417, 444 S.E.2d 431, 434 (1994) (“[A] statute should not be interpreted in a manner which would render any of its words superfluous.”).

The Institute then creates out of whole cloth the notion that nonprofit corporations such as itself are only precluded from practicing law under N.C. GEN. STAT. § 84-5.1 in situations where a conflict of interest exists. This argument by the Institute is not an exercise of “interpretation” but rather of pure *invention* - given that it lacks any statutory support whatsoever.

In sum, the Institute asks the Court to consider everything but the actual language used by the General Assembly in these statutes (despite the fact that the language employed is both unambiguous and dispositive of this issue). What the Institute actually seeks is for this Court to ignore the plain language of the statutes and to instead interpret them in the manner that the Institute thinks they should have been written. It need hardly be said that such an approach would be grossly improper. Since courts cannot rewrite statutes, the Institute's proper remedy is to lobby the General Assembly for such a revision. In the meantime, the statutes must be applied as written.

C. N.C. GEN. STAT. § 84-5.1 Does Not Violate the First Amendment.

The Institute's final argument - that N.C. GEN. STAT. § 84-5.1 violates the First Amendment to the United States Constitution - likewise lacks merit. Its contentions on this issue are long on hyperbole but short on reasoned legal argument. Because this clearly is *not* a case in which a disadvantaged litigant is being deprived of an opportunity to obtain access to the courts to redress a constitutional grievance, the First Amendment is not implicated. Rather, Plaintiffs have retained

five highly competent private attorneys whose continued representation in this case is unaffected by the present motion.

At the outset, it is important to note that no party to this case has actually asserted a First Amendment challenge to any of North Carolina's statutes. Thus, no such challenge is technically before this Court. Furthermore, it is unclear how N.C. GEN. STAT. § 84-5.1 could violate the First Amendment since that statute *allows* indigent representation by nonprofit corporations. However, even to the extent that the Institute means to argue that N.C. GEN. STAT. § 84-5 is unconstitutional, that contention is equally incorrect.

The State's position on this issue does not in any way seek to undermine the First Amendment rulings from the United States Supreme Court regarding the preservation of access to the courts by disadvantaged litigants. To the contrary, the State is contending that a comparison of the decisions relied upon by the Institute with the facts of the present case mandates a conclusion that they do not apply here.

Plaintiffs attempt to rely primarily on a case from the Supreme Court handed down in the midst of the national civil rights movement - *NAACP v. Button*, 371 U.S. 415, 9 L. Ed. 2d 405 (1963). *Button* was a suit brought by the NAACP in which the Court struck down a Virginia law which made it a crime (1) to advise a person that his legal rights had been violated and to refer that person to a provider of legal assistance; or (2) to actually provide legal assistance to the person so referred.

Button does not apply to the present case for a host of reasons. First, while the NAACP was the actual litigant in that case, the Institute is not a party to the present action and, therefore, lacks party standing to assert a deprivation of its First Amendment rights. The named Plaintiffs in this

action cannot assert a claimed constitutional violation allegedly suffered not by themselves but rather by the Institute. Moreover, Plaintiffs have no valid grounds to assert a First Amendment claim on their own behalf as they have not been deprived of their right to have qualified counsel litigate a constitutional dispute for them; Nelson Mullins is doing just that. Their continued receipt of representation from the attorneys they themselves chose to file this lawsuit on their behalf will remain unchanged if the State's present motion is granted.

Second, unlike the NAACP in Virginia in the 1960s, the Institute is able to meaningfully participate in the political process. In addition to offering educational, consulting and advisory services to the public, the bar, and the General Assembly, the Institute is also free to participate in litigation as an intervenor or as an *amicus curiae*. Furthermore, it can represent itself (through its in-house attorneys) in cases where the Institute is a named party. Finally, if it ever so desires, it could reorganize itself so as to meet the requirements for practicing law in this State pursuant to Chapter 55B of the North Carolina General Statutes, thereby entitling it to represent any willing litigants it desires. However, what it cannot do under its present configuration is to directly represent a third party in litigation under the circumstances presented in this case.

Third, unlike the law at issue in *Button*, the purpose of N.C. GEN. STAT. § 84-5 is benign and unremarkable - to prohibit the practice of law by corporations. This statute, obviously, in no way seeks to penalize - much less criminalize - the referral of parties to legal counsel who may represent them. For all of these reasons, it would stretch the *Button* decision beyond the bounds of rationality to apply that case here.

While the Institute also purports to rely on the United States Supreme Court's decision *In Re Primus*, 436 U.S. 412, 56 L. Ed. 2d 417 (1978), that case is likewise inapplicable. In *Primus*, a

lawyer was disciplined under an anti-solicitation rule for helping a woman obtain legal representation for the purpose of suing over her forced sterilization as a condition of her continued receipt of Medicaid benefits. The Supreme Court ruled that the attorney's conduct was protected by the First Amendment. To the contrary, the present issue has nothing to do with an attempt by a state to prohibit solicitation activities. Indeed, the Second Circuit's reasoning in an opinion distinguishing *Primus* applies equally here:

Primus does not suggest that an attorney has a *First Amendment* right to conduct any particular representation, in the face of ethical proscriptions to the contrary, in the absence of any showing that such representation is necessary to facilitate assertion of a specific point of view in court.

Thus, while the . . . defendants have a right to obtain legal advice and representation, we do not believe that on these facts the *First Amendment* protects the right of a particular attorney to represent them in court. We thus conclude that the *First Amendment* does not constrain consideration of the propriety of [the attorney's] representation and the disqualification order . . .”

Board of Education v. Nyquist, 590 F.2d 1241, 1245 (2nd Cir. 1979).²

To the extent the Institute is contending that N.C. GEN. STAT. § 84-5 unconstitutionally prevents its in-house attorneys from practicing their profession, our Supreme Court in *Gardner* expressly rejected such an argument. The Court held that the in-house attorney in that case was free to represent his employer in any court in North Carolina and that he could also represent other litigants as long as he did not do so in conjunction with his employment by the corporation. The

² Moreover, in *Primus*, unlike here, the attorney who claimed her constitutional rights had been violated was a party to the case.

Supreme Court noted that “if he chooses by contract to devote his entire time to [the corporation’s] affairs, he cannot be heard to complain.” *Gardner*, 316 N.C. at 295, 341 S.E.2d at 523.

Nor can the Institute seriously contend that it has an unfettered constitutional right - regardless of its corporate status - to practice law that is immune from state regulation. To the contrary, it is axiomatic that North Carolina - like every other state - has the authority to regulate the practice of law within its borders. *See, e.g., Feliciano v. Tribunal Supremo De Puerto Rico*, 78 F. Supp. 2d 4, 17 (1999) (“Under the Constitution there is no unqualified property or liberty interest to practice law . . .”).

Button and *Primus* do not confer a sweeping, automatic right on the part of all nonprofit organizations to represent third parties in disregard of state statutes regulating the ability of corporations to practice law. To the contrary, they contemplate a case-by-case assessment of whether a First Amendment need exists for such representation in a particular case in order for an aggrieved party to have access to the courts for the purpose of meaningfully asserting a constitutional argument. Here, that assessment results in the conclusion that no such need exists. On the present facts, N.C. GEN. STAT. § 84-5 has neither prevented Plaintiffs from being informed of their constitutional rights nor impaired their ability to obtain access to the courts in order to litigate their constitutional claims. As such, no First Amendment violation has occurred in this case. *See Lawline v. American Bar Ass’n*, 956 F.2d 1378, 1387 (7th Cir. 1992) (rejecting First Amendment challenge to ethical rule barring lawyers from forming partnerships with nonlawyers; “Plaintiffs have not shown that laypersons will be deprived of meaningful access to the courts if lawyers are unable to form partnerships with laypersons.”).

CONCLUSION

In the final analysis, the Institute simply dislikes the policy decision the General Assembly has made regarding the extent to which corporations can practice law in this State. Because the statutes at issue were not written the way it would have preferred, the Institute is improperly asking this Court (rather than the Legislature) to rewrite the statutes. In making these arguments, what the Institute actually seeks is a limitless license to violate N.C. GEN. STAT. § 84-5 any time it sees fit to do so. Its request should not be granted.

Nor has the Institute succeeded in raising a valid First Amendment dispute. Throughout its argument on this issue, the Institute simply ignores the pivotal issue which lies at the heart of the United States Supreme Court cases cited in its brief - whether the proposed representation is necessary in order to enable a litigant to obtain access to the courts for the purpose of asserting its constitutional rights. In the present case, the representation of Plaintiffs by the Institute - in direct violation of North Carolina's statutes - is not necessary to accomplish that purpose. Plaintiffs have at all times received - and will continue to receive - highly competent legal representation from well-qualified attorneys employed by Nelson Mullins - an entity which (unlike the Institute) is fully entitled to represent them under North Carolina law.

However, because the Institute is not so authorized, its participation must be limited to that of an intervenor or *amicus curiae*. Accordingly, the State's Amended Motion to Disqualify should be granted.

Respectfully submitted, this the 21st day of January, 2009.

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing **REPLY BRIEF IN SUPPORT OF AMENDED MOTION TO DISQUALIFY** in the above titled action upon all other parties to this cause by:

- Hand-delivering a copy hereof to each said party or to the attorney thereof;
- Transmitting a copy hereof to each said party via email; or
- Depositing a copy hereof, first-class postage pre-paid, in the United States mail, properly addressed to:

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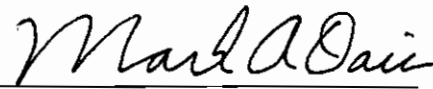
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Mark A. Davis
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EXHIBIT A

LEXSEE 316 N.C. 285

**ROBERT R. GARDNER, and NATIONWIDE MUTUAL INSURANCE CO. v. THE
NORTH CAROLINA STATE BAR**

No. 706PA84

SUPREME COURT OF NORTH CAROLINA

316 N.C. 285; 341 S.E.2d 517; 1986 N.C. LEXIS 2088

May 14, 1985, Heard in the Supreme Court

April 2, 1986, Filed

PRIOR HISTORY: [***1] Appeal by respondent from judgment entered out of session by consent of the parties on 21 August 1984 by *Barnette, J.*, following a hearing at the 2 July 1984 Civil Session of Superior Court, Wake County. Respondent's motion to bypass the Court of Appeals was granted on 30 January 1985.

DISPOSITION: Reversed and remanded.

HEADNOTES

1. Attorneys at Law § 1.1 – whether insurance company attorneys can represent insureds – jurisdiction to decide

The superior court's inherent power to deal with its attorneys provided jurisdiction to decide whether a licensed attorney who was a full-time employee of an insurance company could ethically represent one of the company's insureds as counsel of record in an action brought by a third party for a claim covered by the terms of the insurance policy or appear as counsel of record for the insured in the prosecution of a subrogation claim for property damage. *N.C.G.S. 150A-1 et seq., N.C.G.S. 84-36.*

2. Attorneys at Law § 1.1; Insurance § 100 – insurance company attorneys representing insured – prohibited as corporation practicing law

Insurance company attorneys appearing in court for an insured would fall within the ban of [***2] *N.C.G.S. 84-5* because the attorneys would be acting in the course of their employment; their actions would thereby be those of the company itself; and the company would not in

essence be appearing for itself because the company is not a party to the action, the judgment is against the insured, the insured is responsible for excess damages and collateral penalties, the insured may be called upon to pay the judgment if the company fails, and the insured's property becomes subject to attachment to pay the judgment. The insurance company does not purport to defend or represent its insureds itself when it furnishes a defense by providing an attorney as an independent contractor.

3. Constitutional Law § 23.4; Attorneys § 1.1 – insurance company attorney prohibited from representing insured – not unconstitutional

An attorney who was employed full-time by an insurance company was not unconstitutionally prevented from practicing law when he was not allowed to appear before a court representing an insured. *Art. 1 of the N. C. Constitution, Fourteenth Amendment of the U. S. Constitution.*

COUNSEL: *Bryant, Drew, Crill & Patterson, P.A., by Victor S. Bryant, Jr., for petitioner-appellees [***3] .*

L. Thomas Lunsford, II, and James E. Tucker, for respondent-appellant.

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, by James D. Blount, for Amicus Curiae, The National Association of Independent Insurers, The Alliance of American Insurers and the American Insurance Association.

Smith, Moore, Smith, Schell & Hunter, by J. Donald Cowan, Jr., for Amicus Curiae, The North Carolina Bar

316 N.C. 285, *; 341 S.E.2d 517, **;
1986 N.C. LEXIS 2088, ***3

Association.

JUDGES: Frye, Justice, wrote the opinion. Justice Billings did not participate in the consideration or decision of this case.

OPINION BY: FRYE

OPINION

[*286] [**518] The parties to this action have brought a single question before this Court: May a licensed attorney who is a full-time employee of an insurance company ethically represent one of the company's insureds as counsel of record in an action brought by a third party for a claim covered by the terms of the insurance policy or appear as counsel of record for the insured in the prosecution of a subrogation claim for property damage? We hold that under North Carolina law, the answer is no.

Petitioners¹ presented this question to respondent Bar on 13 January 1982 with a request that the Bar reconsider two of its [***4] ethics opinions, Opinion 682 and CPR 19. Opinion 682, issued in 1969, held that it would be unethical for "house counsel" of an insurance company to defend that company's insureds against claims arising out of automobile accidents. CPR 19, issued in 1974, held that prosecution of subrogation claims in the name of the insured by "house counsel" would also be unethical. The Bar responded to petitioners' request by reconsidering these earlier opinions and then affirming them in CPR 326, adopted 14 January 1983.

1 The individual petitioner, Gardner, is an attorney licensed to practice law in North Carolina who is employed by corporate petitioner Nationwide on a full-time basis.

Considering CPR 326 to be a declaratory ruling as defined by N.C.G.S. § 150A-17, petitioners filed a petition for judicial review with the Superior Court, Wake County, on 11 February 1983. [*287] Both parties submitted memoranda and presented oral arguments to the trial judge. On 21 August 1984, the trial judge entered judgment, [***5] out of session by consent of the parties, in favor of petitioners. The trial judge held that the distinction made by the Bar between "house" and "outside independent" counsel was an arbitrary distinction and therefore unlawful.

Respondent Bar accordingly filed a timely notice of appeal, and petitioned this Court for leave to bypass the Court of Appeals. This Court granted the Bar's petition on 30 January 1985.

We note initially that petitioners' reliance on the Administrative Procedure Act (*N.C.G.S. § 150A-1 et seq.*)² for authority to bring their petition before the superior court raises a jurisdictional problem. The Administrative Procedure Act allows a party aggrieved by an agency's declaratory ruling (N.C.G.S. § 150A-17), or final decision in a contested case (N.C.G.S. § 150A-43), to bring the matter before the Superior Court, Wake County, for judicial review. N.C.G.S. § 150A-45 (1983). Without deciding [**519] the general applicability of the Act to the State Bar and the decisions of its Council, this Court, in *N.C. State Bar v. DuMont*, 304 N.C. 627, 286 S.E. 2d 89 (1982), held that Article 4 of the Act would provide the standard of review applicable to [***6] decisions of the Disciplinary Hearing Commission.

2 Chapter 150A has been amended and recodified as Chapter 150B, effective 1 January 1986.

Nevertheless, in this particular case we need not rely upon the Administrative Procedure Act to find jurisdiction. Instead, we conclude that jurisdiction to decide the question now before us arises out of the court's inherent power to deal with its attorneys. As this Court explained in *In re Burton*, 257 N.C. 534, 542-43, 126 S.E. 2d 581, 587-88 (1962), "[This] power is based upon the relationship of the attorney to the court and the authority which the court has over its own officers to prevent them from, or punish them for, committing acts of dishonesty or impropriety calculated to bring contempt upon the administration of justice." (Citation omitted.) While we agree with the statement in *McMichael v. Proctor*, 243 N.C. 479, 485, 91 S.E. 2d 231, 235 (1956), that "questions of propriety and ethics are ordinarily for the consideration of the . . . Bar" because [***7] that organization was expressly created [*288] by the legislature to deal with such questions, nevertheless the power to regulate the conduct of attorneys is held concurrently by the Bar and the court. The legislation creating and empowering the State Bar expressly states that it does not abridge or disable the court's inherent powers to deal with its attorneys. *N.C.G.S. § 84-36* (1985). Therefore, in a proper case, the court may rule on questions concerning the conduct of attorneys. The

316 N.C. 285, *288; 341 S.E.2d 517, **519;
1986 N.C. LEXIS 2088, ***7

question presented by the petitioners in this case is of sufficient importance to warrant the superior court's consideration.

CPR 326 as recommended by the Ethics Committee and adopted by the Council of the North Carolina State Bar provides in part as follows:

It would be unethical for a full time salaried employee of an insurance company, who is an attorney licensed to practice in the State of North Carolina, to appear as counsel of record in an action brought against an insured by a third party for a claim covered by the terms of the insurance policy or to appear in the prosecution of subrogation claims for the property damage unless such actions are defended or prosecuted only in the [***8] name of the insurance company and the insurance company assumes or is subrogated to the complete legal liability and pecuniary interest of the claim. Independent counsel must be retained for the insured when he is the named defendant or plaintiff and thereby the real party in interest. See *G.S. 1-57*.

This reconsideration affirms Opinion 682 and CPR 19 and those decisions' premise that it is unethical to engage in the unauthorized practice of law as proscribed by *G.S. 84-5*

Protecting and preserving the relationship of the attorney to his client and the court and avoiding professionally reprehensible conflicts of interest also prohibit this manner of legal representation.

The attorney's paramount responsibility is to the court and client which he serves before the court. This responsibility should not be influenced by any other entity. When an attorney, who is employed by a corporation, is directed by his employer in the representation of other individual litigants, he is subject to the direct control of his employer, which is [*289] not itself the litigant and which is

not itself subject to strict professional discipline as an officer of the court. This diluted [***9] responsibility to the court and the client must be avoided.

The Bar gave two reasons for its decision. First, it concluded that allowing attorney-employees to represent insureds would violate the ban on the practice of law by corporations. Second, it reasoned that the proposed practice would result in an increased risk of conflicts of interest that the Bar considered unacceptable.

In considering the Bar's first reason, the trial judge found as follows:

[**520] Ethics Opinion 682 and CPR 19 each prohibited appearance by . . . full time salaried employee[s] of an insurance company . . . on the basis that such appearance . . . would constitute an unauthorized practice of law by an insurance company.

....

There is no case decided by the Appellate Courts of North Carolina directly on point with the issues raised in this case. Because of the substantial financial interest of the insurer in such actions the insurer is in effect representing itself when its House Counsel represents its insured. This does not appear to be in conflict with established law in this State .

...

We agree with respondent Bar that the trial judge erred in his conclusion.

[***10] The practice of law is defined in North Carolina as "performing any legal service for any other person, firm or corporation, with or without compensation" *N.C.G.S. § 84-2.1* (1985). A corporation may not perform legal services for others; *N.C.G.S. § 84-5* forbids it to do so. "It shall be unlawful for any corporation to practice law or appear as an attorney for any person in any court in this State" *N.C.G.S. § 84-5* (1985). See also *State ex rel. Seawell v. Carolina Motor Club, Inc.*, 209 N.C. 624, 184 S.E. 540 (1936). The question at hand is whether an appearance by

one of petitioner corporation's employees on behalf of an insured would constitute a prohibited appearance by the corporation.

The first point of inquiry is whether the corporation would be making an appearance at all. We believe that it would. When a corporation's employees perform legal services for the corporation [*290] in the course of their employment, their acts have been held to be the acts of the corporation so that in law, the corporation itself is performing the acts. *State v. Pledger*, 257 N.C. 634, 127 S.E. 2d 337. Pledger, a layman, was convicted of violating the statute [***11] against the unauthorized practice of law when he prepared legal documents for his corporate employer. This Court decided that Pledger was not guilty, concluding that, "[A] person who, in the course of his employment by a corporation, prepares a legal document in connection with a business transaction in which the corporation has a primary interest, the corporation being authorized by law and its charter to transact such business, does not violate the statute, for his act in so doing is the act of the corporation in the furtherance of its business." *Id.* at 637, 127 S.E. 2d at 339-40. Here, petitioner Nationwide is proposing to send its employees into court in connection with a matter in which it alleges it has a primary interest. Such employees, acting in the course of their employment by the corporation, would be charged with representing its insureds as part of their job for Nationwide. Their acts would thereby be the acts of Nationwide itself. *Cf. Rucker v. Hospital*, 285 N.C. 519, 206 S.E. 2d 196 (1974) (hospital liable for staff physician's malpractice based on employer-employee relationships).

The second point of inquiry is whether the corporation's appearance would [***12] be a prohibited one.

Both petitioners and amicus Insurance Trade Associations argue that the appearance is not prohibited because the corporation would in essence be appearing for itself. We recognize that insurance companies have an interest in the outcome of litigation when the damages sought are covered by their policies. Companies providing automobile insurance are required by statute to pay such damages directly. *N.C.G.S. § 20-279.21(f)* (1984). Amicus Insurance Trade Associations argues that *State v. Pledger*, cited above, supports its contention that an insurance company's appearance on behalf of an insured is not prohibited. It reads *Pledger* as drawing "a

bright line between those matters in which a corporation has a significant interest and those matters in which it does not."

The decision in *Pledger* does speak in terms of allowing employees to prepare legal documents for a corporation when the [*291] corporation has a "primary" interest in the transaction. *Pledger*, 257 N.C. at 637, 127 [**521] S.E. 2d at 339. However, what the Court in *Pledger* meant and what petitioners here mean by "primary interest" are not the same. A close reading [***13] of *Pledger* discloses that in the examples given by the Court, the corporation or individual preparing the legal documents was a party to the transaction. Even if petitioners were correct, however, *Pledger* is not authority for the proposition that a corporation may appear in court for someone else.

If an insurance company, through its employees, appears for an insured, it would be appearing as an attorney for someone else. The company itself is not the party to the action. The insured is the one who is named. Any judgments rendered are rendered against the insured, not against the company. The insured's property becomes subject to attachment to pay such judgment, and he may be called upon to do so if the company fails. Nor are the interests of the insurance company and the insured identical. The insured is solely responsible for any damages in excess of his insurance coverage, and he alone feels the effect of any collateral penalties that result from the litigation.

Because the insurance company's appearance in court is therefore on behalf of a "person," this appearance falls within the ban of *N.C.G.S. § 84-5*. The fact, much urged by petitioners and amicus Insurance [***14] Trade Associations, that the employees Nationwide proposes to use for this purpose are all licensed attorneys, does not change the situation. "Since a corporation cannot practice law directly, it cannot do so indirectly by employing lawyers to practice for it." *State ex rel. Seawell v. Carolina Motor Club*, 209 N.C. at 631, 184 S.E. at 544.

Motor Club stands for the broad proposition that a corporation cannot perform legal services for others. Petitioners argue that the case is distinguishable on various grounds from the practice they propose. In *Motor Club*, defendants Carolina Motor Club and the American Automobile Association advertised that through their legal department they would give advice to members on

legal questions about automobiles, assist in the collection of damages out of court, and furnish representation to members in criminal cases. The trial judge found that these practices constituted [*292] the unauthorized practice of law under a predecessor to *N.C.G.S. § 84-5*, and this Court affirmed.

Both petitioners and amicus Insurance Trade Associations argue that *Motor Club* can be distinguished because defendants in that case had no direct interest [***15] in the outcome of the activities in which they were engaged. Amicus states baldly that the *Motor Club* decision "merely stands for the proposition that a corporation cannot perform legal services for others when, like the Motor Club, it has no interest in a particular transaction or proceeding." In fact, the *Motor Club* opinion itself makes no reference to the defendants' lack of an interest. Accordingly, the opinion cannot stand for the proposition urged by petitioners that while a corporation cannot practice law for others for its own profit, it can do so with impunity to prevent a loss. Even if the case could so stand, *N.C.G.S. § 84-5* still prohibits either practice.

Defendants in *Motor Club* conducted their activities partly through employees and partly through independent counsel. Petitioners quite correctly state that the Court made no distinctions between the two methods in forbidding defendants' activities. Petitioners emphasize that insurance companies have without objection hired independent counsel to represent insureds in this State for many years. No one appears to think they are thereby engaged in the unauthorized practice of law. They argue that their [***16] interest in the outcome of the litigation is what distinguishes them from defendants in *Motor Club*. If their current practice does not contravene *N.C.G.S. § 84-5*, they see no compelling reason why they cannot use salaried attorney-employees to accomplish the same purpose.

The distinction between petitioners' current and proposed practices and defendants' actions in *Motor Club* lies in the character of the performer of the services. [**522] In *Motor Club*, the corporate defendants themselves purported to supply legal services. The fact that a club sometimes did so through independent counsel was irrelevant when the club itself was the "actor." Similarly, the insurance corporation would be the "actor" in petitioners' proposed practice for the reasons we have already discussed. In petitioners' current practice, as

described to this Court, it does not purport to defend or represent its insureds itself. It agrees to furnish a defense and carries out its obligation by paying an independent [*293] attorney, assumed for the purpose of this opinion to be an independent contractor, to represent its insureds. It also has certain contractual rights, supported by its [***17] pecuniary interest, to select this attorney and to have some control over the suit. Nevertheless, the independent attorney is the "actor" who provides legal representation for the insured.

Petitioners and amicus Insurance Trade Associations also argue that other jurisdictions have not found their proposed practice to be the unauthorized practice of law. They urge this Court to consider the authority of these jurisdictions persuasive. Petitioners and their amicus cite two types of authority from other jurisdictions: case law and opinions of state bars. We note that in all of the cases cited, the courts based their decisions upon their own statutes defining the unauthorized practice of law and that these statutes as reported therein are not identical with our *N.C.G.S. § 84-5*. See *Coscia v. Cunningham*, 250 Ga. 521, 299 S.E. 2d 880 (1983); *Kittay v. Allstate Insurance Co.*, 78 Ill. App. 3d 335, 397 N.E. 2d 200 (1979); *Strother v. Ohio Casualty Co.*, 28 Ohio Abs. 550 (C.P. 1939). Indeed, some states have specific statutory exceptions for insurance companies. See *Kittay v. Allstate Insurance Co.*, 78 Ill. App. 3d 335, 397 N.E. 2d 200; see also *Utilities Ins. Co. v. [***18] Montgomery*, 134 Tex. 640, 138 S.W. 2d 1062 (1940). Petitioners submitted three bar opinions giving an unauthorized practice of law analysis. Like the courts, two of the three based their conclusions upon their states' statutes. Neither statute appears identical to ours. The Bar in the third state, New Jersey, based its conclusion upon the American Bar Association's Formal Opinion 282 (1950), which opined that because of identity of interest between insured and insurer, the insurer would not be engaged in the unauthorized practice of law.

While we certainly agree with petitioners and their amicus that the ABA's opinions are entitled to respect, we believe that our duty is to interpret our own state's law according to the policies expressed by our legislature and the best interests of our state. In the first instance, and absent constitutional restraint, questions as to public policy are for legislative determination. *Martin v. Housing Authority*, 277 N.C. 29, 175 S.E. 2d 665 (1970). We agree with respondent Bar and amicus North Carolina Bar Association that North Carolina has a strong policy

favoring personal representation, a policy not necessarily endorsed by other [*294] [***19] states. For example, as long ago as 1930, the Missouri Supreme Court commented:

A generation ago the lawyer was identified with every phase of a person's fortune. He protected him in his reckless youth, he passed upon title deeds to the new home acquired at manhood, he drew up documents relating to his business, collected the accounts, drew the will, handled the settlement of the estate, and then repeated the process with a new generation; whereas, today, the defense of reckless youth falls to the insurance company -- a title company passes on the deed to the new home -- a charter company incorporates the business -- credit insurance companies, trade associations and collection agencies collect the accounts -- and a trust company writes the will and administers the estate.

Liberty Mutual Insurance Co. v. Jones, 344 Mo. 932, 959, 130 S.W. 2d 945, 956 (1930). Our state legislature, on the other hand, continues to require that individuals, not corporations, perform many of these activities. See N.C.G.S. § 58-132(a) (1982) (title certification). See also N.C.G.S. [**523] § 84-5 (1985) (requiring corporations authorized and licensed to act as fiduciaries [***20] to obtain independent attorneys for certain specified activities often considered part of a fiduciary's job); cf. *State Bar Association of Connecticut v. Connecticut Bank & Trust Co.*, 20 Conn. Supp. 248, 131 A. 2d 646 (Conn. Super. Ct. 1957), modified in part and rev'd in part, 145 Conn. 222, 140 A. 2d 863 (1958); *Groniger v. Fletcher Trust Co.*, 220 Ind. 202, 41 N.E. 2d 140 (1942), and *Judd v. City Trust and Savings Bank*, 133 Ohio St. 81, 12 N.E. 2d 288 (1937) (all holding that because corporate fiduciaries could perform any tasks that individual

fiduciaries could perform, they could use either "house" or independent counsel). We also note that respondent Bar had the benefit of the ABA's opinion when it issued its earlier opinions.

To summarize, we agree with respondent Bar that petitioners' proposed practice of allowing employees, in the course and scope of their employment, to represent insureds would constitute the unauthorized practice of law as defined by N.C.G.S. § 84-5. CPR 326 was therefore not based upon an arbitrary distinction and is consequently not unlawful.

[*295] Because we have decided that the first ground set forth in CPR 326 for disapproving [***21] petitioners' proposed practice was correct, we need not reach the second.

In their final argument, petitioners contend that CPR 326 violates *Article I of the North Carolina Constitution* and the *Fourteenth Amendment of the United States Constitution* by allegedly preventing the individual petitioner Gardner from practicing law by denying him the right to appear before a court. There is no merit to this argument. Petitioner Gardner is only prevented from representing his employer's insureds. He may freely appear in court to represent Nationwide itself. As an attorney licensed to practice law in North Carolina, he may also represent other parties desirous of his services so long as he does not do so in conjunction with Nationwide; if he chooses by contract to devote his entire time to Nationwide's affairs, he cannot be heard to complain.

In conclusion, the decision of the Superior Court, Wake County, is reversed, and this case is remanded to that court for entry of judgment not inconsistent with this opinion.

Reversed and remanded.

EXHIBIT B

LEXSEE 209 N.C. 624

**STATE OF NORTH CAROLINA, EX REL. A. A. F. SEAWELL,
ATTORNEY-GENERAL OF THE STATE OF NORTH CAROLINA, EX REL.
ZEB V. NETTLES AS SOLICITOR OF THE NINETEENTH JUDICIAL
DISTRICT, v. CAROLINA MOTOR CLUB, INC., AND AMERICAN
AUTOMOBILE ASSOCIATION.**

[NO NUMBER IN ORIGINAL]

SUPREME COURT OF NORTH CAROLINA

209 N.C. 624; 184 S.E. 540; 1936 N.C. LEXIS 309

March 18, 1936, Filed

PRIOR HISTORY: [***1] APPEAL by defendants from Oglesby, J., at September Term, 1935, of BUNCOMBE. Affirmed.

This was an action, instituted by Zeb V. Nettles, solicitor of the Nineteenth Judicial District, to restrain defendants from doing certain acts in violation of C. S., sec. 199 (a), brought upon application of certain members of the bar and of the Junior Bar Association of Buncombe County, under authority of section 199 (d). Later, on motion, the State ex rel. A. A. F. Seawell, Attorney-General, was made party plaintiff.

The allegations in the complaint are substantially these:

That the defendant Carolina Motor Club, Inc., is a North Carolina corporation, with branch office in Asheville, N.C. and defendant American Automobile Association is a corporation authorized to do business in North Carolina, with branch offices operated through its codefendant, Carolina Motor Club, Inc.; that the defendants, by word, sign, letter, or other advertising, hold themselves out as competent to give legal advice, to prepare legal documents and, in consideration of a payment of regular annual dues, are engaged in advising or counselling in law, acting as attorneys or counsellors at law, and in furnishing [***2] the services of lawyers without license so to do; that defendants in their advertisements hold themselves out and are engaged in furnishing the services of lawyers to assist persons in the collection of damages out of court, furnishing legal advice with respect to the ownership, operation, or

registration of motor vehicles, the furnishing of attorneys for private prosecution of criminal actions, furnishing counsel and attorneys at law to defend persons charged with criminal offenses; that defendants circulate and distribute maps on which are printed advertisements by which defendants hold themselves out as furnishing services of attorneys; that by advertisement through the Carolina Motor News defendants hold themselves out as furnishing attorneys retained by them to represent persons in need of legal advice and court action; that defendants advertise to have collected \$ 71,780.42 through its legal department in civil damages; that defendants are and have been engaged in advising and counselling in law and furnishing the services of lawyers, and are so advertising.

The plaintiff offered the following exhibits:

Exhibit A: "The Club, through its Legal Department will give advice [***3] to members with respect to the ownership, the operation, or registration of members' cars. In addition, the Club will assist members in the collection of damages out of court. The Club does not, however, furnish legal service in civil matters which involve litigation. If, in order to collect damages, court action is necessary, the member must pay for such services to the attorney of his or her choice.

"In criminal cases involving members' cars in those courts where there is no regular prosecuting attorney, the Club will furnish an attorney to prosecute such cases. The Club will also furnish counsel to defendant members charged with criminal offenses, provided said offenses do

not grow out of illegal transportation of whiskey or the operation of a car while under the influence of intoxicating beverages."

"Direct Benefits and General Services:

"Legal advice regarding registration, ownership, and operation of automobiles and defense when member is being unjustly prosecuted."

Exhibit B: "Legal Advice and Assistance." (Said words constituting a caption to a picture of a judge on the bench, with attorney, pleading case for client.)

"Legal Advice--Attorney Services [***4] assures members of advice in any case involving an automobile and defense in criminal actions accruing from operation of an automobile.

"Carolina A. A. A. Motor Club. Claim Service Department Endeavors to collect Damage for Members out of Court. Claim Service--\$ 71,780.42 in Damage Claims Collected for Members. Carolina A. A. A. Motor Club. 6,150 Members Given Legal Advice by Club Attorneys. Legal Advice."

Exhibit C: "A. A. A. Motor Club Attorneys in the Carolinas.

"Herewith is a partial list of corresponding attorneys retained to represent Carolina Motor Club and A. A. A. Members in emergency cases. Members should bear in mind that these local attorneys should be consulted only in case of emergency. A full report of any case demanding legal advice should be filed promptly to club headquarters. It will then be handled by the Claim and Adjustment Department of the club, which may, in its discretion, turn the case over to the proper corresponding attorney."

(Follows list of approximately one hundred [100] North Carolina attorneys, with addresses.)

Defendants in their answer deny the material allegations of the complaint charging them with violating the statute, [***5] and deny they are engaged in the practice of law in any respect. Defendants allege further that these defendants, though incorporated, consist of groups of motorists banded together for their protection and for the advancement of the interest of motorists generally, both as to security and convenience, and for the enactment of wise motor vehicle laws for the safety of

the public; that as incident to the service it renders, in return for the annual dues paid by its members, it uses its good offices to facilitate the amicable adjustment of small claims growing out of operation of automobiles; that in a few instances the club has employed counsel to attempt to settle property damage claims for its members, and has employed counsel to represent its members when unjustly prosecuted.

Affidavits of Coleman W. Roberts, president; J. H. Monte, secretary; and Frank D. Miller were offered by defendants and those of W. C. Maness and A. O. Mooneyham by plaintiffs.

Upon the hearing it was stipulated and agreed by all parties that jury trial in this action be waived; that the court should find the facts from the affidavits and pleadings, and render final judgment thereon. The findings of [***6] fact, conclusions of law, and judgment of the court below are as follows:

"2. That the defendant American Automobile Association is a foreign corporation or organization, but is represented in this State by its co-defendant, the said Carolina Motor Club, Inc., its duly authorized agent, and that the defendant Carolina Motor Club, Inc., is a corporation organized and existing under and by virtue of the laws and statutes of this State.

"3. That the defendants are in the business of rendering certain services to motorists who become members of said organization in consideration of the payment of certain membership fees and annual dues.

"4. That among the services so rendered in consideration of the payment of said annual dues and fees, the defendant Carolina Motor Club, Inc., and the defendant American Automobile Association, through its agent, Carolina Motor Club, Inc., maintain and have maintained what is known as a legal department and claim and adjustment department of said club or clubs.

"5. That the foregoing legal service is partially explained by an advertisement appearing in the Carolina Motor Club News for February-March, 1935, a newspaper published by Carolina [***7] Motor Club, Inc., pages 1, 2, 3, and 4 thereof, being attached to the complaint of the plaintiff, and exhibited, filed, and placed in evidence in this cause, and that said advertisement is in part as follows:

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"Herewith is a partial list of corresponding attorneys retained to represent Carolina Motor Club, Inc., and American Automobile Association members in emergency cases. Members should bear in mind that these local attorneys should be consulted only in cases of emergency. A full report of any case demanding local legal advice should be filed promptly at headquarters. It will then be handled by the claim and adjustment department of the club, which may in its discretion turn the case over to the proper attorneys.'

"(Follows long list of attorneys located in various towns in North and South Carolina.)

"6. That said services are further explained by reference to advertisements published on maps issued by the defendants prior to April, 1935, one of which maps is attached to the complaint, and filed in evidence in this cause, which said advertisements state that attorneys' services assure members of advice in any case involving an automobile and defense in criminal actions [***8] accruing from operation of an automobile; that the claim service department endeavors to collect damages for members out of court, and that \$ 71,780.42 has been collected by this department for members, and that 6,150 members have been given legal advice by club attorneys.

"7. That since April, 1935, said defendants have discontinued the advertising of legal services, but did not discontinue the rendering of said service until the issuance of the temporary restraining order in this cause.

"8. That defendants' services to members in criminal law consist, and has consisted, of employing counsel for private prosecution where the member desired a criminal action to be vigorously pushed against a nonmember motorist with whom he had had a collision, and in employing counsel to defend said members where, in the opinion of the agent of the club, the member was being 'unjustly prosecuted' or was not admittedly guilty of driving under the influence of intoxicating liquor, and that these services were rendered to the members by attorneys employed, retained, and paid directly by the defendants, and that said members were entitled to said service by virtue of the payment of dues and membership [***9] fees to the defendants.

"9. That the services rendered in connection with the civil practice of the law by the defendants consists of giving legal advice, and the collection of damages out of court resulting from collision of motor vehicles; that in

part this service was rendered by lay employees and agents of the club, and in part by attorneys employed, retained, and paid by the defendants, the method being in the discretion of the agents and officers of the defendants.

"10. That the defendant Carolina Motor Club, Inc., admits in open court, through the affidavit filed in this cause by its secretary, J. H. Monte, that lay members of the club have written letters on the stationery of the club to the other party involved in a collision, stating in substance that the member of the motor club was of the opinion that the property damage in question resulted from the negligent operation of the automobile by the other party involved to whom the letter was addressed, and requesting that such party mail a check in a certain amount to cover the damage occasioned, and that if necessary the defendant would write follow-up letters; and the court further finds as a fact that, in this [***10] connection, Mr. Frank D. Miller, manager of the Asheville office of the Carolina Motor Club, Inc., stated in open court that if these letters were successful and a check was received it was the practice to draw up a receipt stating merely that a certain sum had been received as settlement of the damages caused to the car of the club member; and the court further finds as a fact that, in the writing of said letters in the manner hereinabove set out, the defendants were expressing and giving an opinion, at least indirectly, by adopting or confirming the opinion of the club member as to negligence as a matter of law on the part of the claimee, and as to the proper amount of damages involved in a case of tort liability.

"11. The court further finds that both the defendants admit in paragraph 5 of their further answer and defense filed in this cause that at least in a few instances the defendants have employed attorneys to perform this 'claim and adjustment service.'

"12. That for all of the services hereinabove specifically set out the defendants receive valuable consideration in the form of dues and membership fees, and that the giving of said services by the defendants constitutes [***11] a substantial inducement to the motoring public to become members of said organization and pay the required fees and dues therefor.

"13. It further appears to the court that the State of North Carolina does not insist upon and agrees to waive its cause of action with respect to the revocation of defendant Carolina Motor Club's charter.

"Now, therefore, it is hereby ordered and adjudged that the defendants, and each of them, be and they are hereby forever and perpetually restrained and enjoined from in any way advertising or holding themselves out as competent to practice law as defined by the statutes and laws of this State; to prepare legal documents, engage in advising or counsel in law or equity or acting as attorneys and counsellors at law or in furnishing the services of a lawyer or lawyers in legal matters, civil or criminal, as a consideration for the payment of membership dues; directly or indirectly to furnish the service of a lawyer or lawyers in any civil or criminal litigation in consideration for the payment of fee for membership; from collecting, or attempting to collect, damages in or out of court as part of legal service, or settling, or attempting to settle [***12] disputes, by giving legal advice in or out of court, sounding in tort arising from collision of motor vehicles, or other vehicles, on behalf of its members or other parties, and from so settling controversies as to tort liabilities, and from in anywise engaging in the practice of law, or holding themselves out as practicing law in violation of the statutes of this State."

The defendants excepted to paragraphs 9 and 10 of the foregoing findings and judgment, and appealed to the Supreme Court.

DISPOSITION: Judgment affirmed.

HEADNOTES

1. Attorney and Client A b – C. S., 199 (a), prohibiting the practice of law except by members of the bar, is constitutional and valid.

C. S., 199 (a), providing that only those admitted and licensed to practice as attorneys at law may appear as attorney in any action, except appearance by a party *in propria persona*, give legal advice for a fee or any compensation, or prepare legal documents, or hold themselves out as competent to give legal advice or furnish legal services, is constitutional and valid, the right to practice law being subject to legislative regulation within constitutional restrictions and limitations, and the statute not being in contravention of any provision of the State or Federal Constitutions.

2. Attorney and Client A a --

The right to practice law is personal and may not be

exercised by a corporation either directly or indirectly by employing lawyers to practice for it.

3. Attorney and Client A a -- Nature and scope of practice of law in general.

The practice of law is not limited to the conduct of cases in court, but embraces, in its general sense, legal advice and counsel and the preparation of legal documents and contracts by which legal rights are secured, although such matter may or may not be pending in court.

4. Attorney and Client A b -- Decree enjoining defendant corporation from continuing practice of law held correct upon facts found.

The trial court found, upon supporting evidence, that defendant corporations, as a part of their services to their members rendered in consideration of the payment of annual dues, were engaged in giving legal advice, in employing attorneys for members in certain instances to collect damages out of court, in allowing lay members of the incorporated club to write letters on club stationery to persons involved in accidents with members of the club advising, at least indirectly, that such persons were liable in damages in law for negligence in causing such accidents, and in drawing up receipts stating that a certain sum was received as settlement of such damages when collections were made as a result of such letters. *Held:* The findings support the conclusion of law that defendants were engaged in the practice of law in violation of C. S., 199 (a), and judgment upon the findings that defendants be perpetually enjoined from performing such acts is affirmed on appeal.

5. Appeal and Error J c --

Findings of fact by the court under agreement of the parties are conclusive on appeal when based upon competent evidence.

COUNSEL: Zeb V. Nettles, solicitor of the Nineteenth Judicial District.

Weaver & Miller, appearing as amici curiae on behalf of Junior Bar Association for Buncombe County, N. C.

C. C. Collins, H. E. Fisher, and Thomas S. Rollins, Jr., for defendants.

JUDGES: DEVIN, J.

OPINION BY: DEVIN**OPINION**

[*630] [**543] DEVIN, J. The question presented to this Court for decision is whether the particular acts and methods of business of the defendants, as charged in the complaint and found by the court below, constitute a violation of the statute prohibiting the practice of law by unauthorized persons, and particularly by corporations and associations; and are [**544] such as [***13] to entitle the plaintiff to injunctive relief.

By chapter 157, Acts 1931 (C. S., 199-a) it is made unlawful for any corporation, person, or association, except members of the bar of North Carolina, admitted and licensed to practice as attorneys at law, "to appear as attorney or counsellor at law in any action or proceeding in any court; to maintain, conduct, or defend the same, except in his own behalf as a party thereto; or, by word, sign, letter, or advertisement, to hold out himself, or themselves, as competent or qualified to give legal advice or counsel, or to prepare legal documents, or as being engaged in advising or counselling in law or acting as attorney or counsellor at law, or in furnishing the services of a lawyer or lawyers." It [*631] is made unlawful "for any person or association of persons, except members of the bar, for a fee or any consideration, to give legal advice or counsel, perform for, or furnish to another legal service."

And the statute further authorizes the solicitor, upon application of any member of the bar or any bar association, to bring action in the name of the State to enjoin such person, corporation, or association from violating the provisions [***14] of this act. C. S., 199 (a). *Fitchette v. Taylor*, 254 N.W. 910.

The right to practice law is not a natural one. Subject to constitutional restrictions and limitations, the Legislature has the power to prescribe the qualifications and establish the rules and regulations under which citizens may enter upon and continue in the professional practice of the law. *In re Applicants for License*, 143 N.C. 1, 55 S.E. 635.

The statute in question offends neither the State nor Federal Constitution. *Berk v. State*, 225 Ala. 324, 142 So. 832.

A corporation cannot lawfully practice law. It is a

personal right of the individual, obtained by diligent study and good conduct, cannot be delegated or assigned and dies with him.

Since a corporation cannot practice law directly, it cannot do so indirectly by employing lawyers to practice for it. *Re Co-operative Law Co.*, 198 N.Y. 479, 32 L.R.A. (N.S.) 55, 92 N.E. 15; *State ex rel. Lundin v. Merchants' Pro. Corp.*, 105 Wash. 12, 177 P. 694; *Photo Eng. Co. v. Schonert*, 95 N.J. Eq. 12, 122 A. 307; *Re George H. Otterness*, 181 Minn. 254, 232 N.W. 318; [***15] *People v. Cal. Pro. Corp.*, 76 Cal. App. 354, 244 P. 1089; *People v. Merchants Pro. Corp.*, 189 Cal. 531, 209 P. 363; *Re Eastern Idaho Loan & Tr. Co.*, 49 Idaho 280, 73 A.L.R., 1323, 288 P. 157, and note.

In recent years the courts have been frequently called upon to determine what constitutes practicing law. Probably the definition more often quoted with approval is found in *In re Duncan*, 83 S.C. 186, 65 S.E. 210, as follows: "According to the generally understood definition of the practice of law in this country, it embraces the preparation of pleadings and other papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients before judges and courts, and, in addition, conveyancing, the preparation of legal instruments of all kinds, and, in general, all advice to clients, and all action taken for them in matters connected with the law." *In re Duncan*, 83 S.C. 186, 65 S.E. 210; *In re Pace*, 170 A.D. 818, 156 N.Y.S. 641; *Barr v. Cardell*, 173 Iowa 18; *Ferris v. Snively*, 172 Wash. 167, 19 P.2d 942; [***16] *Fitchette v. Taylor*, 254 N.W. 910, 94 A.L.R., 356; *S. v. Bryan*, 98 N.C. 644, 4 S.E. 522.

The practice of law is not limited to the conduct of cases in court. *S. v. Richardson*, 125 La. 644, 51 So. 673. In a larger sense it includes legal advice and counsel and the preparation of legal instruments and contracts [*632] by which legal rights are secured, although such matter may or may not be pending in court. *Boykin v. Hopkins*, 162 S.E. 796 (Ga.).

But the defendants in the case at bar contend they are not practicing law. They do not object to any of the prohibitions contained in the judgment except as their "claim and adjustment" department may be affected. They excepted only to paragraphs 9 and 10 of the findings and judgment of the court below.

The question whether the maintenance of a collection

209 N.C. 624, *632; 184 S.E. 540, **544;
1936 N.C. LEXIS 309, ***16

agency comes within the [**545] definition of practicing law has been considered by the courts in other jurisdictions, and it has been generally held that while a collection agency might lawfully, for its members and others, engage in the collection of their claims, the maintenance of a law department and through [***17] it giving free legal advice to members and the performance of the services of an attorney in collecting the claims would constitute practicing law, and that where the corporations employed attorneys to dispense legal advice and services of the sort usually furnished by lawyers to their clients, and undertook to perform various legal services through licensed attorneys paid by them, it would be regarded as an evasion of the law. *Creditors' National Clearing House v. Bannwart*, 227 Mass. 579, 116 N.E. 886; *Midland Credit Adjustment Co. v. Donnelley*, 219 Ill. App. 271; *Grocers & Merchants' Bureau v. Gray*, 6 Tenn. Civ. App. 87, cited in 84 A.L.R., 753; *State v. Retail Credit Men's Association*, 163 Tenn. 450, 43 S.W.2d 918; *Berk v. State*, 225 Ala. 324, 142 So. 832 (distinguishing *Kendrick v. State*, 218 Ala. 277, 120 So. 142); *Boykin v. Hopkins*, 162 S.E. 796 (distinguishing *Trust Co. v. Boykin*, 172 Ga. 437, 157 S.E. 455).

In the recent case (1935) of *Rhode Island Bar Association v. Automobile Service Association*, 179 A. 139, [***18] where the facts were very much like those

in the case at bar, the questions here involved were fully discussed with citation of authorities, and a similar result reached.

The defendants in the case at bar, doubtless, perform useful services for the convenience of their members, and in the public interest with respect to the safety of motor vehicular travel and the promulgation of automobile laws and regulations, but in so far as any of their activities, methods, and conduct contravene the express provisions of the statute, they must, upon proper application, be enjoined.

The complaint in the case at bar alleges violations of law in the very terms of the statute. The findings of fact and conclusions of law determine that in certain respects the identical matters and things forbidden by the statute have been and are being done by the defendants, and the judgment enjoins them from continuing such unauthorized practices.

The findings of fact based on evidence are conclusive on appeal, and the conclusions of law of the court below necessarily follow, and must be sustained.

Judgment affirmed.

EXHIBIT C

Home - Welcome - Services - News & Events - Fitness - Cancer Info - The Breast Center

Welcome

Hope Women's Cancer Centers

Map/Directions

Office Hours

Your Staff

First Appointment

Personalized Patient Care

Payment Info



Fee, Payment Policy, and Insurance

Payment is expected at the time of service. We will be glad to file a claim to your insurance as a courtesy. If we participate with your insurance, please be prepared to pay any co-pays or deductibles at your visit. Some insurance companies require an authorization or referral prior to your appointment. It is your responsibility to make sure this authorization is obtained.

We participate in the following plans:

- Blue Cross Blue Shield
- Crescent—most plans
- Medicare
- Medicaid
- Health Care Savings
- Medcost




Co-payments cannot be discounted or waived. Financial counseling is available upon request.

Visit North Carolina's Institute of Medicine's website for their helpful publication:
[A Consumer's Guide to Health Insurance and Health Programs in North Carolina](#)

100 Ridgefield Court • P.O. Box 16948 • Asheville, NC 28816 • 828.670.8403
6 Sheridan Square, Suite 100 • Kingsport, TN 37660 • 423-245-1040

EXHIBIT D



-  Patient Medical History
-  Patient Information
-  New Problem Questionnaire



For your convenience, Raleigh Orthopaedic Clinic participates with Business Office staff will gladly assist you with any questions or call our account: (919) 863-6920.

Our commitment to our patients is to provide excellent customer service and we can be of any assistance to you. Our goal is to make your experience...

Insurance Providers for Raleigh Orthopaedic Clinic include:

- | | |
|--------------------------------|-------------------|
| Aetna US Healthcare | Blue Cross/Blue S |
| Carolina Premier Medical Group | Carolina Summit |
| CIGNA | DukeHealth Direc |
| Envision | Ethix |
| First Health | Great West |
| HealthSource | Humana |
| Kanawha Healthcare Solutions | Mamsi |
| Medcost | Medicaid |
| Medicare | OneNet PPO |
| Patient's Choice | Preferred Health |
| Primary Physiciancare | Private Healthcar |
| Provident PRO | United Healthcar |
| Wellpath | |

It is best to check with your insurance company before making an appointment to ensure you will be covered. Thank you for choosing Raleigh Orthopaedic Clinic.

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EXHIBIT E



Elaine F. Marshall
Secretary

North Carolina
DEPARTMENT OF THE SECRETARY OF STATE

PO Box 29622 Raleigh, NC 27626-0622 (919)807-2000

CORPORATIONS

- Corporations Home
- Search By Corporate Name
- Search For New Corporation
- Search By Registered Agent
- Important Notice
- Resale of Tickets Online
- Corporations FAQ
- Homeowners' Association FAQ
- Tobacco Manufacturers
- Unincorporated Non-Profits
- Dissolution Reports
- Non-Profit Reports
- Verify Certification
- Online Annual Reports

SearchType: Starting With

Search Criteria: raleigh
orthopaedic clinic

Search Date: 1/21/2009 11:16:05 AM

Clickon the entity name below to view the business profile

| | Entity Name | Type | Status | Formed | Online Annual Reports |
|----|-----------------------------------|------|----------------|----------|-----------------------|
| NC | Raleigh Orthopaedic Clinic, P. a. | PA | Current-Active | 1/1/1970 | N/A |

1 Records Returned. Search Again

LINKS & LEGISLATION

- KBBE B2B Annual Reports
- SOSID Number Correction
- 2001 Bill Summaries
- 1999 Senate Bills
- Annual Reports 1997
- Corporations 1997
- Register for E-Procurement
- Dept. of Revenue

ONLINE ORDERS

- Start An Order
- New Payment Procedures

CONTACT US

- Corporations Division

TOOLS

- Secretary of State Home
- Secretary of State Site Map
- Printable Page



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Secretary

North Carolina
DEPARTMENT OF THE SECRETARY OF STATE
PO Box 29622 Raleigh, NC 27626-0622 (919)807-2000

CORPORATIONS

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- Corporations FAQ
- Homeowners' Association FAQ
- Tobacco Manufacturers
- Unincorporated Non-Profits
- Dissolution Reports
- Non-Profit Reports
- Verify Certification
- Online Annual Reports

Date: 1/21/2009

Click here to:

View Document Filings | Sign Up for E-Notifications |

Corporation Names

| Name | Name Type |
|--------------------------------------|-----------|
| NC Raleigh Orthopaedic Clinic, P. a. | Legal |

Professional Corporation Information

| | |
|-----------------------|----------------|
| SOSID: | 0120848 |
| Status: | Current-Active |
| Date Formed: | 1/1/1970 |
| Citizenship: | Domestic |
| State of Inc.: | NC |
| Duration: | Perpetual |

Registered Agent

| | |
|------------------------------------|--|
| Agent Name: | Stein, Karl F. |
| Registered Office Address: | 3515 Glenwood Ave Raleigh NC 27612 |
| Registered Mailing Address: | 3515 Glenwood Ave Raleigh NC 27612 |
| Principal Office Address: | No Address |
| Principal Mailing Address: | 3515 Glenwood Ave Raleigh NC 27612-4996 |

Stock

| Class | Shares | No Par Value | Par Value |
|-----------|--------|--------------|-----------|
| COMMON | 10000 | | 1 |
| PREFERRED | 90000 | | 1 |

LINKS & LEGISLATION

- KBBE B2B Annual Reports
- SOSID Number Correction
- 2001 Bill Summaries
- 1999 Senate Bills
- Annual Reports 1997
- Corporations 1997
- Register for E-Procurement
- Dept. of Revenue

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EXHIBIT F



Elaine F. Marshall
Secretary

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- Homeowners' Association FAQ
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- Unincorporated Non-Profits
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- Non-Profit Reports
- Verify Certification
- Online Annual Reports

SearchType: Starting With Search Criteria: Hope A Womens

Search Date: 1/21/2009 11:13:13

AM

Clickon the entity name below to view the business profile

| | Entity Name | Type | Status | Formed | Online Annual Reports |
|----|-------------------------------------|------|----------------|----------|-----------------------|
| NC | Hope - A Women's Cancer Center, PA. | PA | Current-Active | 1/1/1994 | N/A |

1 Records Returned. Search Again

LINKS & LEGISLATION

- KBBE B2B Annual Reports
- SOSID Number Correction
- 2001 Bill Summaries
- 1999 Senate Bills
- Annual Reports 1997
- Corporations 1997
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PO Box 29822 Raleigh, NC 27626-0622 (919)807-2000

CORPORATIONS

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- Search For New Corporation
- Search By Registered Agent
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- Corporations FAQ
- Homeowners' Association FAQ
- Tobacco Manufacturers
- Unincorporated Non-Profits
- Dissolution Reports
- Non-Profit Reports
- Verify Certification
- Online Annual Reports

Date: 1/21/2009

Click here to:

[View Document Filings](#) | [Sign Up for E-Notifications](#) |

Corporation Names

| Name | Name Type |
|---|------------|
| NC Hope - A Women's Cancer Center, PA. | Legal |
| NC Nathan E. Williams, M.D., P.A. | Prev Legal |

Professional Corporation Information

| | |
|------------------------------|------------------|
| SOSID: | 0336419 |
| Status: | Current-Active |
| Date Formed: | 1/1/1994 |
| Citizenship: | Domestic |
| Professional Service: | Medical Services |
| State of Inc.: | NC |
| Duration: | Perpetual |

LINKS & LEGISLATION

- KBBE B2B Annual Reports
- SOSID Number Correction
- 2001 Bill Summaries
- 1999 Senate Bills
- Annual Reports 1997
- Corporations 1997
- Register for E-Procurement
- Dept. of Revenue

Registered Agent

| | |
|------------------------------------|---|
| Agent Name: | Williams, Nathan E |
| Registered Office Address: | 100 Ridgefield Court Asheville NC 28806 |
| Registered Mailing Address: | PO Box 16948 Asheville NC 28816 |
| Principal Office Address: | No Address |
| Principal Mailing Address: | 445 Biltmore Ave Ste 501 Asheville NC 28801-4526 |

ONLINE ORDERS

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Stock

| Class | Shares | No Par Value | Par Value |
|--------|--------|--------------|-----------|
| COMMON | 100000 | Yes | N/A |